State v. *Fenn,* 47 Wash. 561. Other states attach greater weight to the particular domestic policy than to the general policy of upholding marriages, and their courts have held such marriages void. *Pennegar* v. *State,* 87 Tenn. 244; *Lanham* v. *Lanham,* 136 Wis. 360. Illinois appears to follow this rule. HURD'S REV. STAT. Ch. 40, § 2, *Wilson* v. *Cook,* 256 Ill. 460. The Michigan court, therefore, came to the conclusion that defendant and Shirley were not husband and wife in Illinois.

It is, therefore, admitted that under the Illinois law the marriage is not recognized. But it is not challenged in Illinois but in Michigan where the marriage contract was entered into. There are two essential elements of the legal idea of marriage: (1) the contract of marriage, and (2) the marriage status. The marriage status is created by the marriage contract and continues in existence until it is dissolved by a divorce. It is difficult to see how the marriage contract can be successfully challenged in Michigan. Under the Michigan law the parties were not incapacitated to enter into a marriage contract, the Illinois statute can have no extra-territorial effect in Michigan, and no rule of state comity was suggested which required the Michigan court to recognize and enforce the prohibition of the Illinois law. It therefore follows that a marriage status was created. This status has not been dissolved and its existence presupposes a husband and a wife. Yet the court says: "It is impossible to defend the proposition that because the marriage ceremony was performed in this state she can claim here to be the wife of the defendant; that by mere removing of herself from her matrimonial domicile, in which she is no wife, she becomes, the state line being crossed, a wife in Michigan." The court's novel (and, it is to be hoped unique) suggestion that Illinois was the matrimonial domicile of the parties because they were not—and could not be—husband and wife in Illinois, adds another item to the long list of legal absurdities that have resulted from the abuse and misconception of the term "matrimonial domicile." See *Haddock* v. *Haddock,* 201 U. S. 562. The court further says: "If defendant and Shirley had intended to acquire, and had acquired, a domicile in Michigan before or at the time the marriage was celebrated, the validity of the marriage could not be here successfully questioned." The placing of the validity of the marriage in Michigan upon the question whether or not the parties acquired a matrimonial domicile in that state is certainly a novel test. No case has been found where such a test has been applied. J. G. C.

NEGLIGENT ASSAULT AND BATTERY.—A man driving an automobile negligently, but without direct intent to injure anyone, inflicts an injury upon another. If the victim dies within a year and a day as a result of the accident, the driver is guilty of manslaughter. *Schultz* v. *State,* 89 Neb. 34; *State* v. *Watson,* 216 Mo. 420; *State* v. *Goetz,* 83 Conn. 437; *State* v. *Campbell,* 82 Conn. 671. If the victim survives that period does any criminal responsibility attach to the negligent act? If the law is developed with any logic or symmetry in this respect, criminal responsibility, though of a lesser degree, must still attach to the act. And, if it is any crime among the specific crimes

of the common law, it must be assault and battery, the law not having split personal injuries into two degrees of offense, as it has homicides.

One who drove his automobile through a city street at a rate that exceeded the rate permitted by law and that endangered public safety and that actually resulted in the injury of a pedestrian, was convicted of assault and battery by "wilfully and unlawfully" striking and wounding another with an automobile. The conviction was sustained by the Supreme Court of New Jersey in *State* v. *Schutte,* 93 Atl. 112 (1915). The court concedes the correctness of the defendant's contention that "both the willful wrongdoing that constitutes malice in the law and also an intention to inflict injury are of the essence of a criminal assault; and that, as a necessary corollary, mere negligence will not sustain a conviction for such crime," but states that it must be "borne in mind that the necessary malice may be implied from the doing of an unlawful thing from which injury is reasonably to be apprehended, and also that an intention to injure need not be specifically directed to the particular individual that was injured, but may be inferred in law from the consequences that are naturally to be apprehended as the result of the particular act, the doing of which was intentional." The decision reaches the result suggested above, though upon grounds not very easy of comprehension. Responsibility is rested, not upon the familiar doctrine of negligence, but upon implications of malice and intent. Upon an examination of the whole case, however, it becomes quite clear that in distinguishing between "mere negligence" which "will not sustain a conviction," and the "malice" and "intention to inflict injury," which were found established in that case, the court meant to distinguish between things which in ordinary legal parlance would both be called negligence, the one being a negligent act of omission, the other a negligent act of commission. In addition to the language quoted above, which deals with "malice" and "intention" in the very terms in which negligence is usually defined, we find the court distinguishing *State* v. *O'Brien,* 32 N. J. L. 169, where the defendant *neglected* to throw a railroad switch, saying that "we are dealing with a willful act done under circumstances that rendered likely the infliction of such an injury as that which actually resulted from it;" and further, the court says, "the running of a car at a high rate of speed is an act in which the will of the driver concurs, and hence is clearly a willful act, as distinguished from merely negligent conduct, when considered with respect to the state of mind of the offender, which is what the criminal law considers;" and again, "It requires neither argument nor illustration to show that the excessive rate of speed at which an automobile is driven is a product of the will of its driver and not the result of his mere inattention or negligence. The two cannot be confused any more than the hurling of a baseball bat into a crowd of spectators could be confused with its accidentally slipping from the hand of the batter."

To sustain its position that malice may be inferred from the doing of an unlawful thing from which injury is reasonably to be apprehended, the court relies upon *Queen* v. *Martin,* 8 Q. B. D. 54, in which it was held that the defendant was properly convicted of maliciously injuring another under facts showing that he turned out the lights and put up a bar in a passageway

in a theater so as to cause a panic and a jam in which several persons were injured. Among other cases cited to this point are *Commonwealth* v. *Hawkins,* 157 Mass. 551, where a conviction of assault with a dangerous weapon was sustained under facts showing that the prisoner upon a dark night in a reckless and grossly negligent manner fired a pistol from his door to frighten away persons who had been annoying him, and injured an innocent party; and *Smith* v. *Commonwealth,* 100 Pa. 324, in which it was held that one is guilty of an assault and battery who, in a frolic and with the design of frightening passengers, discharges a pistol into the floor of a car and wounds another in the foot. None of the cases cited by the court has, however, gone as far as *State* v. *Schutte* toward holding broadly that a negligent injury constitutes a criminal assault and battery. H. C. B.

POWER OF INTERSTATE COMMERCE COMMISSION TO COMPEL CONNECTIONS WITHIN THE BOUNDARIES OF A SINGLE SWITCHING DISTRICT.—The Pennsylvania Company had a system of railroad yards, team tracks, and sidings whereby it reached a great number of industries in and near New Castle, Pennsylvania. These were all included in what was termed a single switching district. The city was served by four other railroads, one of which (the Rochester Company) petitioned the Interstate Commerce Commission for an order compelling the Pennsylvania Company to accept from and deliver to the petitioner carload lots of freight at a point within such switching district where the tracks of the Pennsylvania Company and the petitioner had physical connection. Agreements for a similar interchange of traffic were in force between the Pennsylvania Company and the three other railroads serving the city. The physical connection of the Pennsylvania Company and one of such other roads was at the same point at which the road of the petitioner and the Pennsylvania Company were physically connected. The Interstate Commerce Commission granted the order, the Pennsylvania Company sought (by injunction), to prevent its being carried into effect, and from an order denying this injunction the case was carried to the Federal Supreme Court. The order denying the injunction was there affirmed. *Pennsylvania Company* v. *U. S. et al.,* (1915) 35 Sup. Ct. 370.

The question involved in the decision requires for its answer a discussion of the difference between the use of terminal facilities and the extending of switching privileges on the one hand, and the performance of a transportation service to a connecting carrier on the other. As appears from a perusal of the statutory provisions bearing on this matter, § 3 of the ACT OF 1887 TO REGULATE COMMERCE provides among other things that all common carriers subject to the Act shall provide equal facilities for the interchange of traffic between their respective lines. It however, adds the proviso that this shall not be construed to require any such carrier to give the use of its tracks or terminal facilities to a carrier engaged in like business. 24 STAT. AT LARGE 380. If, therefore, the service here sought to be compelled was in its essence a use of the terminal facilities of the appellant, it would be clearly within the proviso, and consequently illegal. It, therefore, became the duty of the court in upholding this order to show that it was